IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

WP(C).No. 2061 of 2007(U)

AGAINST THE ORDER IN EP.58/2005 IN
OS.177/1997 of PRL.SUB COURT,KOTTAYAM

.....

PETITIONER:

ABRAHAM JACOB, S/O. JACOB
AGED 53,
PALAKUNNEL (CHETTUKAVUNGAL)
MAMMOOD, MADAPPALLY VILLAGE,
CHANGANACHERRY TALUK, KOTTAYAM.

BY ADV. SRI.PHILIP MATHAI
SRI.R.MURALEEKRISHNAN

RESPONDENT:

P.P. THOMAS, S/O. THOMAS,
PULLUKATTU HOUSE, PERUNNA EAST MURI,
CHANGANACHERRY VILLAGE, KOTTAYAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.2061 OF 2007

DATED THIS THE 18th DAY OF JANUARY, 2007

JUDGMENT

Petitioner is judgment debtor. Respondent is decree holder. This petition is filed under Article 227 of Constitution of India challenging Ext.P5 order passed by executing Court for sale of attached property. Case of petitioner is that he received only Ext.P4 notice issued by the Court under Rule 54 directing to appear on 21.11.06 and on 21.11.06 Ext.P5 order was passed and he did not receive any notice under Rule 66 and though he filed an objection to Rule 54 notice evidenced by Ext.P3 objection it was not considered and in such circumstances, Ext.P5 order is to be quashed.

2. On hearing learned Counsel appearing for petitioner and perusing Ext.P4, it is clear that executing Court directed petitioner to appear before the Court for settlement of the terms of proclamation of sale only on 21.11.06. On 21.11.06 an order for sale of the property was passed.

3. The case of petitioner is that the entire attached property need not be sold for realisation of the decree debt and only a part of the property need be sold to satisfy the decree debt and therefore the order is to be quashed.

4. Rule 64 of Order XXI of Code of Civil Procedure cast an obligation on the Court to consider whether sale of the entire attached property is necessary for realisation of the decree debt. It is not a discretion. Ext.P5 order shows that before passing the order, the provisions of Rule 64 of Order XXI was not considered. So also the value shown by the petitioner was also not considered as provided under sub rule 2 of Rule 66 of Order XXI of Code of Civil Procedure. Ext.P5 order is therefore quashed.

Executing Court is directed to hear the objection of petitioner and thereafter consider whether the entire attached property is to be sold as provided under Rule 64 and settle the proclamation as provided under Rule 66 and then only proceed with the sale.

Petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,JUDGE

Acd